HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No. 25341 of 2006

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Between:
Sri Ganji Jogeswara Babu

…Petitioner

And
The Commissoner,
Narasaraopeta Municipality,
Guntur District & others

….Respondents.

:: O R D E R ::

Counsel for the petitioner : Shri C. Upendra

Counsel for respondent No.1 : Shri S. Ngeswara Reddy

02.04.2007

Per G.S. SINGHVI, CJ

In this petition filed as a piece of public interest litigation, the petitioner has prayed for issue of a direction to respondent Nos.1 to 3 not to permit emission of dust, smoke, smell etc. through exhaust fan in the kitchen of M/s. S.V. Bar and Restaurant (respondent No.4) housed in Door No.14-1-25, opposite to L.B. Market, Kondalaraopeta, Narsaraopeta Town, Guntur District.

The petitioner is a resident of house bearing Door No.8-14-5, Ward No.15, Kondalaraopeta, Narsaraopeta. His complaint is that despite repeated representations made by him, Commissioner, Narsaraopeta Municipality and other official respondents have not taken steps to curb the smoke, dust, fumes, smell etc. emanating from respondent No.4 bar and restaurant.

In the counter affidavits filed by Sri D. Gopalakrishna Reddy, Commissioner, Narsaraopeta Municipality and Sri V. Ravindranath, Prohibition and Excise Inspector, Narsaraopeta, it has been averred that action has already been initiated for controlling dust, smoke etc. emanating from respondent No.4 bar and restaurant. In paragraphs 7 and 9 of his affidavit, Sri D. Gopalakrishna Reddy has averred as under:

> "7. It is submitted that it is true that the house of the petitioner was at East facing surrounded by business establishments and residential houses. The back side of the Bar & Restaurant of the 4th respondent is exactly opposite to the house of the petitioner and is separated by municipal road of 8 feet width. The kitchen was in the back portion of the building of the 4th respondent and the exhaust fan was fixed in the wall and small chimney fixed to the exhaust fan to emanate the smoke and smell emitting from the kitchen. In the kitchen, gas cylinders were arranged for preparation of the food items and there is no chance of emanating the smoke.
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> 9. It is submitted that on receiving the letter from the Collector and District Magistrate, Guntur vide letter L.Dis.no.4103/2006-H7, dt.18-11-2006, the 1st respondent issued a notice to the 4th respondent on 21-11-2006 under Sections 41(8), 44 read with 134(1) of Andhra Pradesh Public Health Act, 1939 to remove the chimney fixed to exhaust fan and to fix the same inside the kitchen to avoid the nuisance caused to the petitioner. The 4th respondent gave his reply on 24-11-2006 stating that he will make arrangements not to give any inconvenience to the neighbourhood within one week and accordingly the petitioner covered the window and the exhaust fan with cemented mesh. Even though the petitioner was

not satisfied with the arrangements, a case was filed by the municipality before the Hon'ble Court of Special Judicial Magistrate of 2nd Class, Narsaraopet vide S.T.C.No.186/2006. A charge sheet was also filed before the Hon'ble Court on 27-11-2006 and the case is pending for trial before the Hon'ble I Additional Munsif Magistrate Court, Narsaraopet."

In paragraphs 2 and 3 of his affidavit, Sri V. Ravindranath has averred as under:

"2. In reply to the averments made in para No.3 of the petitioner's affidavit, it is submitted that it is a fact that Bar Licence in Form No.2-B was issued in favour of Sri Koka Lakshmaiah, S/o. Kondaiah, R/o.Narsaraopeta, the 4th respondent herein on 25-8-2006 at Door No.14-1-25, L.B. Nagar Market Centre, Narsaraopeta after fulfilling all the required formalities as required under Andhra Pradesh Excise (Grant of Licence of selling by Bar and Conditions of Licence) Rules, 2005. I submit that the 4th respondent also submitted no objection certificate issued by the 1st respondent to run the Bar and Restaurant in the said premises. The allegation of the petitioner that the 4th respondent had taken the said premises on lease for residential purpose and started using the same for commercial purpose is not correct. I submit that as per the documents submitted by the 4th respondent he is the owner of the said premises i.e. Door No.14-1-25, L.B. Market Centre, Narsaraopeta.

3. In reply to the averments made in para Nos.4, 6 and 7 of the petitioner's affidavit, it is submitted that it is a fact that the petitioner made a representation dt.15-11-2006. It is also a fact that the Collector and District Magistrate, Guntur vide proceedings dt.13-11-2006 directed the third respondent to look into the matter and take immediate necessary action. I submit that pursuant to the letter of the petitioner and the proceedings of the District Collector, Guntur dt.13-11-2006, the third respondent directed the Prohibition & Excise Inspector, Narsaraopeta (the deponent) to inspect the licensed premises and take necessary action on 17-11-2006. I submit that I have inspected the licensed premises of the 4th respondent on 8-12-2006 and directed the 4th respondent to remove the exhaust fan and also directed to extend the smoke chimney up to the terrace facing the sky so as to avoid any inconvenience to the neighbours and also further instructed to construct a wall completely blocking the view on the back side of the building. I submit that I have further visited the licensed premises of the 4th respondent on 20-12-2006, 26-12-2006 and 8-1-2007 to supervise the progress of work. I submit that on my visit on 8-1-2007, I found that the 4th respondent carried out the entire work as directed. I submit that the 4th respondent constructed a well completely blocking the view on the back side, removed the exhaust fan and fixed it inside the kitchen and also extended the smoke chimney up to the terrace facing the sky as directed by me. I submit that the allegation of the petitioner that the third respondent had not taken any action in spite of his representation is not correct. As already submitted, his representation was considered and the 4th respondent made all necessary modifications to avoid any inconvenience to the neighbours as directed by me."

At the hearing, Sri S. Nageswara Reddy, learned counsel for respondent No.1 produced the extract of the master plan of the area to show that the site, on which the bar and restaurant exists, falls in the commercial area. He also gave out that respondent No.4 has already removed the exhaust fan and chimney and now there is no emission of dust, smoke etc. from the bar and restaurant.

The aforementioned statement has not been controverted by the learned counsel for the petitioner.

In view of the above development, the writ petition is disposed of as infructuous.

G.S.SINGHVI, CJ

2nd April, 2007.

C.V.NAGARJUNA REDDY, J

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